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10/531,776	04/19/2005	Franciscus Augustinus Majoor	F7674(V)	6046

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EXAMINER

WOMACK, DOMINIQUE A

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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08/07/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/531,776	Applicant(s) MAJOOR ET AL.	
	Examiner DOMINIQUE WOMACK	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Claims 1-14 are pending. Claim 15 has been canceled. Applicant's amendments filed on 4/13/2009 have been acknowledged.

Rejections

2. Any rejections and/or objections made in the previous office action, dated January 13, 2009, and not repeated below are hereby withdrawn.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "the bottom part" in line 10. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 1 recites the limitation "the upper ridge" in lines 11-12. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 2 recites the limitation "the tolerance" in line 1. There is insufficient antecedent basis for this limitation in the claim.

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8. Claim 6 recites the limitation "the bottle" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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12. **Claims 1-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,732] in view of Kohl [US Pat No 5,499, 736] and Goodall [US Pat No. 6,041, 953] and Agbay, Sr. [US Pat No 4,919,286].**

13. **Regarding claim 1**, Bergholtz discloses an injection molded blank made from plastic. This plastic blank can take the shape of a bottle. The bottle comprises a body, a bottle head (neck) and a base. (col. 1, lines 23-27). Bergholtz further discloses a snap-on closure (col. 1, lines 34-41).

14. **Regarding claim 1**, Bergholtz fails to disclose a snap-on closure comprising a peripheral skirt with a ridge intended for engagement with the inner surface of the neck.

15. Kohl discloses a snap-on lid for a container comprising an annular latch arm (skirt) (Fig.2, #72) and a smaller seal lock wall (Fig. 2, #74) spaced radially outwardly of the latch arm and defining a sealing and locking groove (Fig. 2, #76). The latch arm includes a locking ledge (Fig. 2, #78) (ridge) adapted to cooperatively engage the latch shoulder (Fig. 2, #66) (col. 5, lines 57-67).

16. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the latch arm and locking ledge of Kohl to the snap-on closure of Bergholtz in order to form a snap-on closure with a skirt and a ridge. One of ordinary skill in the art would be motivated to form a snap-on closure with a skirt and a ridge because Kohl teaches that a cap body with this construction forms a strong fluid-tight seal between cap body and bottle opening (col. 5, lines 18-21).

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17. **Regarding claim 1**, Bergholtz in view of Kohl fails to disclose a snap-on closure wherein

the free outer diameter of the ridge is slightly higher than the free inner diameter of the neck.

18. Goodall discloses a snap-on closure where the outer diameter of the closure (D~) is larger than the inner diameter of the neck of the container (O2) (CO1. 8, lines 52-58).

19. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the diameter relationship of Goodall to the snap-on closure of Bergholtz in view of Kohl in order to have a snap-on closure wherein the free outer diameter of the ridge is slightly higher than the free inner diameter of the neck. One of ordinary skill in the art would be motivated to have this diameter relationship between the snap-on closure and the neck of the container because Goodall discloses that this type of diameter relationship locks the closure into the container.

20. **Regarding claim 1**, Bergholtz in view of Kohl and Goodall fails to teach a closed container having a protrusion lying against an inclined part of the bottom part of the closure which prohibits downward movement of the ridge, and said web lying against the upper ridge of the neck resulting in a fixation of the ridge in upward direction.

21. Agbay discloses a hinged closure and container. Agbay discloses a container and closure structure wherein the neck of the container has a cap lock (Fig. 1, #10) that lies against an incline portion of the sealing rib (fig. 1, #26) (fig. 1; col. 5, lines 16-20). The inner diameter of the sealing rib is less than the outer diameter of the cap latch so that, when the cap cover is snapped onto the container, the cap latch and sealing rib engage each other in a tightly fitting manner to provide an effective liquid seal (col. 5, lines 20-24). The exterior sealing flange (fig.1, #24) abuts

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the top rim (fig.1, #9) of the neck externally when the cap is closed. The top rim and exterior sealing flange in conjunction with the sealing rib and cap latch form the flexible valve seal (col.5, lines 29-33).

22. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate flexible valve seal of Agbay to the snap-on closure of Bergholtz in view of Kohl and Goodall in order to have a snap-on closure wherein the closure and container engage each other in a tightly fitting manner. One of ordinary skill in the art would be motivated to have this type of sealing relationship because Agbay teaches that it provides an effective liquid seal.

23. **Regarding claim 2**, Bergholtz in view of Kohl and in further view of Goodall and Agbay is interpreted to read on the claimed limitations because the snap-on closure is in a locked relationship with the container, thus the tolerance of movement in zero.

24. **Regarding claim 3**, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses a container where the inner sealing surface of the neck is smooth (Bergholtz: col. 4 lines 38-55).

25. **Regarding claim 4**, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses that in order to obtain a good and reliable seal, the snap-on closure is composed of a softer thermoplastic material than the head of the package (Bergholtz: col. 4, lines 56-61). It is well known in the art that the lower the Shore D Hardness of a material, the softer it is.

26. **Regarding claim 5**, it would have been obvious to one of ordinary skill in the art at the time of the invention for Shore D hardness of the material of the ridge to be 65 or smaller and the Shore D Hardness of the material of the neck to be 70 or higher because "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or

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workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See MPEP § 2114.05 II. In the instant case, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses that in order to obtain a good and reliable seal, the snap-on closure is composed of a softer thermoplastic material than the head of the package (Bergholtz: col. 4, lines 56-61). It is well known in the art that the lower the Shore D Hardness of a material, the softer it is.

27. **Regarding claim 10**, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses a snap-on cap and container that are provided with a tamper evident structure. The container of Agbay comprises a tear strip (fig. 4, #22) that remains on the closure until the closure is first opened (col. 6, lines 6-10).

28. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add a tear-strip to the snap-on closure and container of Bergholtz in view of Kohl and Goodall in order to prevent tampering. One of ordinary skill in the art would be motivated to prevent tampering because it ensures that the product enclosed in the container will remain suitable for end consumer use.

29. **Regarding claim 11**, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses that the snap-on closure is preferably constructed of LLDPE (Kohl: col. 4, lines 50-53). This type of material allows for fluid tight seals after repeated opening and closing of the closure (Kohl: col. 4, lines 43-50).

30. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the material of Kohl to snap-on closure of Bergholtz in view of Kohl and in further view of Goodall and Agbay in order to have a snap-on cap made of flexible, resilient thermoplastic

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material approved for food contact. One of ordinary skill in the art would be motivated to have a snap-on closure made of flexible, resilient thermoplastic material approved for food contact because Kohl discloses that this type of material allows for fluid tight seals after repeated opening and closing of the closure.

31. **Regarding claim 12**, Bergholtz in view of Kohl and in further view of Goodall and Agbay discloses that the container can be a bottle (Bergholtz: col. 1, lines 23-27)

32. **Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,732] in view of Kohl [US Pat No 5,499, 736] and Goodall [US Pat No. 6,041, 953], Agbay, Sr. [US Pat No 4,919,286], and further in view of Heckman [US Pat No 4,248,030].**

33. Bergholtz in view of Kohl and in further view of Goodall and Agbay is relied upon as above with respect to claim 11.

34. Bergholtz in view of Kohl and in further view of Goodall and Agbay fails to disclose a container wherein only the bottle and neck are largely covered with oriented polystyrene.

35. Heckman discloses a container that has a sleeve covering its bottle and neck (Fig. 10). The sleeve can be made of oriented polystyrene (col. 4, lines 23-32). Heckman discloses that the sleeve forms a snug engagement with the exterior surfaces of the container, serves as a label, and forms a composite package (col. 4, 16-22 and claim 10).

36. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the oriented polystyrene sleeve of Heckman to the container of Bergholtz in view of Kohl

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and further in view of Goodall and Agbay in order to provide a container with an oriented polystyrene wrapping. One of ordinary skill in the art would be motivated to provide a container with an oriented polystyrene wrapping because the oriented polystyrene sleeve of Heckman forms a snug engagement with the exterior surfaces of the container, serves as a label, and forms a composite package.

37. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,732] in view of Kohl [US Pat No 5,499, 736] and Goodall [US Pat No. 6,041, 953], Agbay, Sr. [US Pat No 4,919,286], and further in view of Contreras, Sr. [US Pat No 4,693,392].

38. Bergholtz in view of Kohl and in further view of Goodall and Agbay is relied upon as above with respect to claim 1.

39. Bergholtz in view of Kohl and in further view of Goodall and Agbay fails to disclose a container with a click hinge.

40. Contreras discloses a closure member that has a hinge and boss assembly for association with a container that when moved into the open position makes an audible click during the use of the container (col. 2, lines 43-47). The audible click lets the user know when the closure is in the fully closed or opened position (col. 7, lines 21-39).

41. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the hinge and boss assembly of Contreras to snap-on closure and container of Bergholtz in view of Kohl and further in view of Goodall and Agbay in order to have a click-hinge. One of

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ordinary skill in the art would be motivated to have a click-hinge because the audible click lets the user know when the closure is in the fully closed or opened position.

42. **Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergholtz [US Pat No 6,260,732] in view of Kohl [US Pat No 5,499, 736] and Goodall [US Pat No. 6,041, 953], Agbay, Sr. [US Pat No 4,919,286], and further in view of Kinney [US Pat No 3,544,338].**

43. Bergholtz in view of Kohl and in further view of Goodall and Agbay is relied upon as above with respect to claim 1.

44. Bergholtz in view of Kohl and further in view of Goodall and Agbay fails to disclose a container with filled with a sterilized or pasteurized microbiologically sensitive food product having a ph of 6 to 8.

45. Kinney discloses that milk can be enclosed in can be added to a blow molded thermoplastic container with a snap closure (col. 3, lines 62-65). It is well known in the art that milk can be pasteurized and that milk has a ph of 6.9.

46. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to include milk as the contents of the container of Bergholtz in view of Kohl and in further view of Goodall and Agbay in order to provide a container with a consumable product inside. One of ordinary skill in the art would be motivated to place milk in the container of Bergholtz in view of Kohl and further in view of Goodall and Agbay because the container is aseptic closure suitable for flowable media as taught by Bergholtz (Bergholtz: col. 1, lines 50-64).

Response to Arguments

47. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection. Applicant's amendment added the limitation of the protrusion lying against an inclined part of the bottom of the closure which prohibits downward movement of the ridge and the web lying against the upper ridge of the neck resulting in a fixation of the ridge in an upward direction. This new limitation necessitated a new search and new rejections as cited above. Applicant argues that the Office points to no teaching of Kohl or Goodall that meets this limitation. Agbay cited in the rejection above is considered to teach this limitation and is combined with the previous references in the manner stated above.

Conclusion

48. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571) 270-7366. The examiner can normally be reached on Monday-Thursday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./
Dominique Womack
Examiner, Art Unit 1794

31 July 2009

/JENNIFER MCNEIL/
Supervisory Patent Examiner, Art Unit 1794